

AMENDED AND RESTATED
AGREEMENT WITH RESPECT TO THE
DEVELOPMENT AND OPERATION OF THE
MUSEUM OF AFRICAN AMERICAN MUSIC

THIS AMENDED AND RESTATED AGREEMENT WITH RESPECT TO THE DEVELOPMENT AND OPERATION OF A MUSEUM OF AFRICAN AMERICAN MUSIC (the "Agreement") is effective as of the ____ day of _____, 2019, by and between THE AFRICAN AMERICAN HISTORY FOUNDATION OF NASHVILLE, INC., a Tennessee nonprofit corporation (the "Foundation"), and THE INDUSTRIAL DEVELOPMENT BOARD OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, a Tennessee public nonprofit corporation and instrumentality of The Metropolitan Government of Nashville and Davidson County (Tennessee) (the "Industrial Board"), and THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY (the "Metropolitan Government").

Background Statement

The Metropolitan Government has requested that the Industrial Board cause the acquisition and construction of the Museum of African American Music (the "Museum" or "Project") to be funded, in part, by a grant from to the Metropolitan Government pursuant to a Grant Agreement with the remainder of such funding to be provided by the Foundation. The Metropolitan Government has determined that the construction of this Museum will provide educational opportunities for the citizens of the Metropolitan Government, promote and encourage the undertaking and performance of the arts in the community and promote economic development and regional tourism. The Industrial Board intends to make a site available for the development of the Museum on real property located at the corner of Broadway and Fifth Avenue North in an OliverMcMillan Spectrum Emery, LLC (the "Developer") development to be known as Fifth + Broadway (the "Development"). Pursuant to this Agreement, the Foundation agrees to oversee the development, construction and operation of the Museum, to provide funds necessary to complete construction of the Museum, to fulfill the obligations of the Metropolitan Government pursuant to the Project Sublease (as defined herein) and to pay all operating and maintenance costs of the Museum. The Foundation, the Metropolitan Government, and the Industrial Board desire to set forth in this Agreement their respective obligations with respect to the construction, operation and financing of the Museum.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth below, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by the parties hereto, the parties do hereby covenant and agree as follows:

ARTICLE I
DEFINITIONS

Unless the context shall clearly indicate otherwise, when used in this Agreement the words and phrases set forth below shall be defined as follows:

"Capital Improvements" shall mean all necessary capital repairs and replacements to the Project, including any equipment therein.

"Certificate of Occupancy" shall mean the certificate to be issued by the appropriate Government Authority certifying that the Project is suitable for occupancy.

"Completion Date" shall mean the date the Certificate of Occupancy is issued.

"Construction Consultants" shall mean any and all architects, engineers, land planners, lawyers, general contractors, accountants, and all other consultants and contractors deemed, from time to time, by the Foundation to be necessary or appropriate to assist the Foundation in the performance of its duties pursuant to Article VI of this Agreement.

"Developer" shall mean OliverMcMillan Spectrum Emery, LLC.

"Development" shall mean the mixed use development to be located on the real property at the corner of Broadway and Fifth Avenue North in Nashville, Tennessee to be known as Fifth + Broadway.

"Development Budget" shall mean the projected expenditures, including but not limited to soft costs such as architectural and engineering fees and costs of demolition of existing buildings and structures on the Project Site, required to prepare the Project Site and to construct and equip the Project in accordance with the Plans.

"Disbursement Request" shall have the meaning given to such term in Section 5.5 of this Agreement.

"Environmental Law" means any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions or wells. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes, and regulations promulgated thereunder, and amendments and successors to such statutes and regulations, as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C.; 33 U.S.C.; 42 U.S.C. and 42 U.S.C. § 9601 et seq.); (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.); (iii) the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.); (iv) the Clean Water Act (33 U.S.C. § 1251 et seq.); (v) the Clean Air Act (42 U.S.C. § 7401 et seq.); (vi) the Safe Drinking Water Act (21 U.S.C. § 349; 42 U.S.C. § 201 and § 300f et seq.); (vii) the National Environmental Policy Act of 1969 (42 U.S.C. § 4321); (viii) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); and (ix) comparable state statutes.

"Excused Performance" shall mean any suspension, delay or failure in the Foundation's performance of its duties and obligations pursuant to Article V or Article VI (other than Section 6.9) of this Agreement by reason of the occurrence of any one or more of the following conditions or events: (a) Force Majeure; (b) subsurface conditions relating to the Project Site; (c) the presence of Hazardous Materials on the Project Site or the actual or alleged violation or required compliance with any Environmental Law which is not caused by the Foundation; or (d) acts of or a failure to act or undue delays by the Industrial Board or the Foundation. In the event that the Foundation desires to assert an Excused Performance as the reason for any suspension, delay or failure in performing any obligation or agreement under Article V or Article VI of this Agreement, the Foundation shall notify the other parties hereto of such Excused Performance and set forth in such notice the Foundation's good faith estimate of the number of days of Excused Performance expected to result therefrom, and shall advise the other parties hereto of any change in such estimate. Any Excused Performance shall be deemed to commence on the day that the event causing such Excused Performance first adversely affects performance of the Foundation's obligations.

"Facility Management Subcontractors" shall mean third-party providers deemed, from time to time, by the Foundation to be necessary or appropriate to assist the Foundation in the performance of its duties as manager of the Project pursuant to Article VI of this Agreement.

"Fiscal Year" shall mean the fiscal year of the Foundation.

"Force Majeure" shall mean any cause, circumstances or event that is not reasonably foreseeable and that is not within the control of the Foundation, including, without limitation, the following: acts of God, strikes, lockouts or other industrial disturbances; acts of public enemies, including acts of terrorism; orders or restraints of any kind of the government of the United States of America or the State of Tennessee or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; war; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; droughts; floods; washouts; arrests; restraint of government and people; explosions, breakage, malfunction of or accidents with respect to facilities and machinery; partial or entire failure of utilities, and shortages of or inability to obtain labor, materials, supplies or transportation.

"Foundation" shall mean the African American History Foundation of Nashville, Inc., a Tennessee nonprofit corporation.

"Grant Agreement" shall mean that Grant Agreement between the Metropolitan Government and the Industrial Board pursuant to which the Metropolitan Government will make the Metropolitan Government Grant.

"Government Authorities" shall mean all municipal, county, state and federal governments, agencies, authorities, courts and officials now or hereafter having jurisdiction over the Project Site.

"Hazardous Materials" shall mean any petroleum product, and any hazardous, toxic or dangerous waste, substance or material defined as such in Environmental Law.

"Industrial Board" shall mean The Industrial Development Board of The Metropolitan Government of Nashville and Davidson County, a public nonprofit corporation and instrumentality of Davidson County, Tennessee.

"Legal Requirements" shall mean all current laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations and other requirements of all Government Authorities now or hereafter applicable to or affecting the Project Site or any use or condition of the Project Site.

"Metropolitan Government" shall mean The Metropolitan Government of Nashville and Davidson County, Tennessee.

"Metropolitan Government Grant" shall mean a contribution to be made by the Metropolitan Government to the Industrial Board in the amount of \$10,000,000 for the purpose of assisting in the financing of the Project.

"Operating Budget" shall mean the budget prepared by the Foundation pursuant to Section 6.10 for each Fiscal Year to operate and maintain the Project.

"Person" shall mean any natural or artificial legal entity whatsoever, including, without limitation, any individual, general partnership, limited partnership, incorporated association, sole proprietorship, corporation, trust, business trust, real estate investment trust, Government Authority or joint venture.

"Plans" shall mean the Plans for the Project prepared by the Foundation pursuant to the terms of this Agreement.

"Project" or "Museum" shall mean the museum for African American Music, including the premises within the Development and all equipment therein, to be constructed and equipped pursuant to this Agreement, but shall not include any removable equipment installed by the Foundation in the Project that is exclusively used by the Foundation in connection with the performance of its obligations hereunder.

"Project Site" shall mean the real property and appurtenances thereto to be conveyed by deed of transfer to the Industrial Board for the purpose of equipping, constructing and operating the Museum, which property is described on Exhibit A attached hereto.

"Project Deed" shall mean the conveyance of the Project Site by deed of transfer to the Industrial Board by the Developer.

"Project Lease" shall mean that certain lease agreement for the Project Site between the Industrial Board, as landlord, and Developer, as tenant.

"Project Sublease" shall mean that certain sublease agreement for the Project Site between the Developer, as sublandlord, and Metropolitan Government, as subtenant.

"Supplies" shall have the meaning given to such term in Section 6.2(a)(v) of this Agreement

Capitalized terms not defined in this Article I or elsewhere in this Agreement shall, unless the context requires otherwise, have the meanings set out in the Project Lease and/or Project Sublease.

ARTICLE II PLANS AND SPECIFICATIONS

2.1 Completion and Approval of Plans. The Foundation shall cause the Plans for the design, construction and equipping of the Project to be completed and such Plans shall be in sufficient form for the Foundation to obtain a reasonable estimate of the cost of the Project. If the bids for constructing and equipping the Project come in higher than the costs projected in the Development Budget, the Foundation may, at its option, either pay such excess costs from its own funds or have the Plans revised, provided the design is approved by the Metropolitan Government and the Industrial Board, or size of the Project is not materially altered, so that the costs of constructing and equipping the Project are within the limits set forth in the Development Budget.

ARTICLE III AGREEMENT TO LEASE

3.1 Conveyance of Project Site. The Foundation agrees to use commercially reasonable efforts to cause the Developer to (i) enter into a Project Lease with the Industrial Board; and (ii) enter into the Project Sublease with the Metropolitan Government.

3.2 Term of Agreement. The term of this Agreement shall commence on the date set forth above and shall extend until the termination of the Project Lease, unless terminated earlier pursuant to the terms and provisions set forth in the Agreement.

ARTICLE IV
METROPOLITAN GOVERNMENT GRANT

4.1 Metropolitan Government Grant. Pursuant to the Grant Agreement, the Metropolitan Government has agreed to make the Metropolitan Government Grant which shall be disbursed in accordance with Section 5.5 hereof.

4.2 Last Date For Contribution. If the Metropolitan Government Grant is not made in accordance with the terms of the Grant Agreement and of this Agreement, then this Agreement shall not become effective, and the parties shall have no obligations hereunder.

ARTICLE V
ENGAGEMENT OF FOUNDATION AS THE DEVELOPER OF THE PROJECT

5.1 Exclusive Engagement of Foundation. The Industrial Board and Metropolitan Government hereby engage the Foundation to serve as exclusive developer of the Project. In such capacity, the Foundation shall be responsible for assembling the resources necessary to construct the Project in accordance with the Plans. The Foundation hereby accepts such engagement in accordance with and subject to the provisions set forth in this Agreement. Construction of the Project shall commence no later than as provided in the Project Sublease.

5.2 Authority and Responsibility of The Foundation. The Industrial Board and the Metropolitan Government hereby authorize the Foundation, and the Foundation hereby agrees, to select, engage, coordinate and supervise all Construction Consultants, in connection with the development and construction of the Project. The Foundation shall enter into contracts or agreements with each Construction Consultant in the Foundation's own name. The Foundation shall proceed diligently with the development and construction of the Project and shall cause the completion of the Project in accordance with the provisions of this Agreement and the Project Sublease. Among the other responsibilities of the Foundation are:

(a) The Foundation shall engage or cause to be engaged all Construction Consultants for the Project, subject to the limitations of this Agreement and the Project Sublease.

(b) The Foundation shall manage and coordinate the services of the Construction Consultants responsible for the design and construction of the Project. The Foundation shall review, verify, and recommend for payment all applications for payment submitted as a Disbursement Request as described in Section 5.5 hereof.

(c) The Foundation shall obtain, or cause to be obtained by others, all licenses, permits and approvals from the Developer, Government Authorities and other authorities which, under law, are necessary to commence, prosecute, complete, occupy and use the Project.

(d) The Foundation shall prepare, or cause to be prepared by others, all applications necessary to obtain commitments for water, sewer, electricity, telephone and other utility services necessary for the construction and operation of the Project in accordance with this Agreement and the Project Sublease. All such applications shall be completed and obtained by the Foundation in its own name and processed by the Foundation on a timely basis.

(e) The Foundation shall direct, supervise, coordinate and monitor the activities of all Construction Consultants engaged in the development and construction of the Project; inspect and monitor the work and activities of such Construction Consultants; inspect construction and progress on a

regular basis; and maintain compliance with the Project Sublease with respect to such construction activities.

(f) The Foundation shall advise and assist the Industrial Board with respect to the execution of such easements, dedications, covenants, variances and any and all other administrative approvals or consents as the Foundation considers necessary or appropriate for the Project.

(g) The Foundation shall provide or cause to be provided reports (which shall include cost and scheduling analysis) to the Industrial Board and the Metropolitan Government upon their request concerning the evaluation by the Foundation of the progress of the Project.

5.3 Completion of Project. The Foundation shall perform all of the Foundation's obligations set forth in this Article V in a timely manner in accordance with the terms of this Agreement. The Foundation shall notify the Industrial Board and the Metropolitan Government promptly upon the occurrence of any Excused Performance and shall use its good faith and reasonable efforts to overcome any delays in connection with the performance of the Foundation's obligations resulting therefrom. The Foundation shall obtain a Certificate of Occupancy for the Project no later than as provided in the Project Sublease with such deadline being extended for each day of delay resulting from any Excused Performances. The Foundation's reasonable efforts pursuant to this Section shall not require the Foundation to expend additional funds to overcome any delays in performance.

5.4 Costs and Expenses To Complete Project. Notwithstanding anything herein to the contrary, the Foundation shall be responsible for paying all costs of the Project which exceed the amount of the Metropolitan Government Grant.

5.5 Method of Payment of Metropolitan Government Grant.

(a) The Metropolitan Government shall make the Metropolitan Government Grant in one or more installments to the Industrial Board upon receipt of certification from the Industrial Board and the Foundation that:

(i) All of the Metropolitan Government Grant or such portion thereof will be used for expenditures for capital costs relating to the Project on or before three years from the date of deposit of the Metropolitan Government Grant or such portion thereof;

(ii) Within six (6) months from the date of deposit of the Metropolitan Government Grant or such portion thereof, the Foundation will have incurred substantial binding obligations to a third party to expend with respect to capital costs relating to the Project at least 5% of the Metropolitan Government Grant or such portion thereof; and

(iii) The work on the Project and the expenditure of the Metropolitan Government Grant or such portion thereof is expected to proceed with due diligence.

(b) The parties hereto acknowledge that, in order for the Foundation to perform its obligations under this Agreement and deliver the Project to the Industrial Board in a timely fashion, the Industrial Board must make available to the Foundation the proceeds of the Metropolitan Government Grant to pay costs of the Project. The Metropolitan Government Grant may be made in one or more installments upon request of the Foundation and if necessary to enable the Foundation to make the certifications set forth in subsection (a) hereof. To that end, the Industrial Board agrees to make the proceeds of the Metropolitan Government Grant available to the Foundation to pay the costs of the Project in the following manner: To receive funds, the Foundation shall (1) deliver to the Metropolitan

Government Finance Department (i) a requisition in the form containing sufficient detail of payments made or of payments due for capital costs for construction of the Project in order to obtain a disbursement of the proceeds of the Metropolitan Government Grant, and (ii) such other certifications as may be required by bond counsel for the Metropolitan Government to obtain a disbursement of the proceeds of the Metropolitan Government Grant in the amount set forth in such disbursement request (any such requisition and other materials being referred to herein as a "Disbursement Request"); and (2) the Metropolitan Director of Finance shall have approved the Disbursement Request in writing.

(c) The Foundation acknowledges and agrees that all amounts to be disbursed pursuant to a Disbursement Request submitted by the Foundation shall be used to pay for capital costs due or incurred in connection with work performed on or with respect to the Project. All interest and earnings thereon from the Metropolitan Government Grant shall be expended not later than three years of the date of deposit of such Metropolitan Government Grant, and if not expended will be returned to the Metropolitan Government.

(d) Any unspent portion of the Metropolitan Government Grant shall be returned to the Metropolitan Government if construction of the Project has not commenced as provided in the Project Sublease.

5.6 Guaranties and Warranties. The Foundation shall use its good faith efforts to obtain normal and customary warranties or guaranties from each Construction Consultant for the work to be performed by each Construction Consultant in connection with the Project, which are fully assignable to the Industrial Board and the Metropolitan Government upon request. The Industrial Board and the Metropolitan Government shall cooperate with the Foundation in enforcing any such warranties and guaranties so as to minimize the cost of maintaining the Project.

5.7 Fiscal Matters. The Foundation shall maintain for the Industrial Board and the Metropolitan Government current and adequate records and accounts of all transactions with respect to the development and construction of the Project. Such books of account shall be maintained at the Foundation's office in Nashville, Tennessee or at such other place as the Industrial Board and the Metropolitan Government shall agree upon, and the Industrial Board and the Metropolitan Government and its accountants, auditors and agents shall have access to such books and accounts during normal business hours upon reasonable prior written notice to the Foundation. The Foundation shall maintain said books and accounts in a safe manner and separate from any records not dealing directly with the Project. Such books and accounts shall be kept in accordance with sound accounting practices consistently applied, and otherwise in such manner as shall be reasonably required by the Industrial Board.

5.8 Employees. The Foundation shall, at its expense, hire and retain, as employees of the Foundation, and not as employees of the Industrial Board or the Metropolitan Government, such personnel as may be required to properly perform the Foundation's functions under this Article. The compensation, retention and performance of employees hired by the Foundation shall be controlled exclusively by the Foundation. The Foundation shall be responsible for complying with all laws and regulations affecting such employment, including the provision of any benefits or compensation required by statute or contract.

5.9 The Foundation's Efforts. The Foundation shall furnish its reasonable skill and judgment, acting through its Construction Consultants, in developing and constructing the Project and in advising the Industrial Board and the Metropolitan Government with respect to the Project. The Foundation shall cause the Project to be completed in as expeditious and economical a manner as is practicable and consistent with the Plans and in compliance with the Project Sublease. The Foundation shall use

reasonable efforts to cause the completed Project to fully comply with the Project Sublease and all Legal Requirements, including Environmental Laws. The Foundation will comply with all applicable Legal Requirements (including applicable Environmental Laws) in performing its services pursuant to this Article. The Foundation shall use its good faith efforts to cause the Project to be completed in a lien free manner, and shall promptly remove or cause to be removed by bonding or otherwise all liens filed against the Project Site and/or related to the Project, provided that, subject to the terms and provisions of the Project Sublease, the Foundation shall be permitted to contest any such liens without removing same provided that the existence of any such liens will not present any risk of loss of title (including any leasehold title) to the Project Site.

5.10 Insurance. The Foundation, during the period of the development and construction of the Project, shall place and maintain (or cause to be placed or maintained), builder's risk insurance in the full replacement value of the Project and as otherwise required by the Project Sublease. The Metropolitan Government, on behalf of the Industrial Board, shall be shown as the payee and insured under such policy to the extent of the Metropolitan Government Grant, and all proceeds of such insurance shall be payable to the Metropolitan Government, on behalf of the Industrial Board, and the Foundation in accordance with their respective interests. Such policy, to the extent obtainable, shall provide that it shall not be cancelled without at least thirty (30) days' prior written notice to the Industrial Board and to the Metropolitan Government. In addition to maintaining the builder's risk insurance, during the term of the Project Sublease, the Foundation, shall also place and maintain any and all insurance required by the Project Sublease.

5.11 Obligation To Rebuild. If prior to the completion of the Project, the Project should be destroyed or damaged by any cause, then the Foundation shall take such actions as required by the Project Lease and/or the Project Sublease. If the Foundation elects to rebuild the Project, then the Industrial Board will remit such insurance proceeds to the Foundation for the reconstruction of the Project which will be disbursed pursuant to Section 5.5 hereof.

ARTICLE VI ENGAGEMENT OF THE FOUNDATION AS FACILITY MANAGER

6.1 Facility Management By Foundation. The Metropolitan Government hereby engages the Foundation to act on its behalf to manage and operate the Project for the term provided for herein following the Completion Date. The Foundation shall pay all costs incurred in connection with the performance of its obligations hereunder to the extent such costs exceed the revenues from the operation of the Project. The Industrial Board and the Metropolitan Government hereby grants to the Foundation all necessary power and authority to perform its obligations under this Article and agrees to execute and deliver such additional documentation as may be reasonably requested by the Foundation to implement such grant. The Foundation hereby accepts such engagement in accordance with and subject to the provisions set forth in this Agreement. The Foundation agrees to provide such services in consideration for the availability of the Project and agrees that no additional compensation for such services shall be payable hereunder. The Foundation shall be permitted to subcontract to third parties any of its obligations under this Article VI; provided, however, that the Foundation shall remain primarily responsible for the performance of such obligations and that any subcontracts comply with the requirements of the Project Lease and Project Sublease. Neither the Metropolitan Government nor the Industrial Board shall be responsible for any costs incurred in connection with the operation of the Project or the acquisition of any exhibits in connection with the Project. Neither the Industrial Board nor the Metropolitan Government shall be responsible for any costs in excess of the Metropolitan Government Grant which shall be used exclusively for capital costs in connection with construction of the Project and preparation of the Project Site.

6.2 Responsibility and Authority of The Foundation With Respect To Operation of Project.

(a) The Foundation's general duty and responsibility pursuant to this Agreement shall be to manage and to supervise the Project. In discharging its general duty and responsibility, the Foundation shall perform the following specific duties. The Foundation will assemble the resources, supervise and direct the management of the Project. The duties of the Foundation with respect to the management of the Project are as follows:

(i) The Foundation shall hire/engage and supervise all full or part-time employees and service providers required in connection with the operation and maintenance of the Project;

(ii) To the extent necessary in the performance of its duties, the Foundation shall negotiate the fees, charges and expenses of Facility Management Subcontractors required in connection with the Project;

(iii) The Foundation shall make, cause to be made, or supervise all ordinary and necessary repairs, alterations, and Capital Improvements to the Project as appropriate, subject to ordinary wear, tear and aging of the Project;

(iv) The Foundation will provide or supervise periodic cleaning and janitorial services, with its employees or through a Facility Management Subcontractor;

(v) The Foundation shall oversee the procurement of all goods, materials, supplies, appliances, uniforms, tools, inventory and equipment (the "Supplies") needed to operate the Project;

(vi) The Foundation shall monitor and pay all utility charges and services related to the Project;

(vii) The Foundation shall prepare, submit, monitor, and make, as needed, revisions to the Operating Budget;

(viii) The Foundation will assist in the moving, arrangement, and relocation of furniture and movable equipment in connection with the ordinary, day-to-day operations, such as the moving and installation of portable dividers or cubicles, the arrangement of furniture and equipment to facilitate presentations or meetings, and similar activities;

(ix) The Foundation shall engage or cause to be engaged all Facility Management Subcontractors reasonably needed to fulfill the Foundation's duties in connection with the operation and maintenance of the Project;

(x) The Foundation shall monitor the condition of the Project and, upon request, provide periodic reports (which shall include, as applicable, cost and scheduling analysis) to the Industrial Board and the Metropolitan Government concerning the Foundation's evaluation of the Project on an ongoing basis, to the extent of any material occurrences or changes in connection with the Project;

(xi) The Foundation shall coordinate and monitor repairs, replacements, refurbishments and capital maintenance as are needed to operate and maintain the Project in a first-rate condition, normal wear, tear and aging excepted;

(xii) The Foundation shall be responsible for all operating expenses for the Project, whether such liability is incurred by a Facility Management Subcontractors, the Industrial Board, or the Metropolitan Government; and

(xiii) The Foundation shall comply with and fulfill all obligations of the Metropolitan Government under the Project Sublease.

6.3 Facility Management. The Foundation shall perform all of the Foundation's obligations set forth in this Article VI in a timely and competent manner in accordance with the terms of this Agreement. The Foundation shall notify the Industrial Board and the Metropolitan Government upon the occurrence of any Excused Performance in connection with the performance due by the Foundation pursuant to this Article VI, and shall use its good faith efforts to overcome any delays in connection with the performance of the Foundation's obligations resulting therefrom.

6.4 Term As Manager. The term that the Foundation shall act as facility manager for the Industrial Board and the Metropolitan Government pursuant to this Article shall commence (the "Commencement Date") on the date of completion of the Project and shall end upon termination of the Project Lease or Project Sublease.

6.5 Guaranties and Warranties. The Foundation shall use its good faith, commercially reasonable efforts to obtain normal and customary warranties or guaranties from each Facility Management Subcontractor for the work to be performed by each Facility Management Subcontractor in connection with the operation and maintenance of the Project. The Industrial Board and the Metropolitan Government shall cooperate with the Foundation in the enforcement of such warranties and guaranties so as to minimize the cost of maintaining the Project.

6.6 Books, Records, Reports, Fiscal Matters. The Foundation shall maintain current and adequate records and accounts of all transactions with respect to operation and maintenance of the Project. Such books of account shall be maintained at the Foundation's office in Nashville, Tennessee or at such other place as the Industrial Board and the Metropolitan Government shall reasonably agree upon. The Industrial Board and the Metropolitan Government, and its accountants, auditors and agents, shall have access to such books and accounts during normal business hours upon reasonable prior written notice to the Foundation. The Foundation shall maintain said books and accounts in a safe manner and separate from any records not dealing directly with the operation and maintenance of the Project. Such books and accounts shall be kept in accordance with sound accounting practices consistently applied, and otherwise in such manner as shall be reasonably required by the Industrial Board and the Metropolitan Government.

6.7 Staffing. The Foundation shall hire employees or engage Facility Management Subcontractors, as it deems appropriate, to perform its obligations under this Article and the Foundation shall have the authority and responsibility for the staffing for such services. The Foundation will comply with all applicable Legal Requirements, including citizenship and security clearance requirements, with respect to all staffing requirements. No staff engaged by the Foundation will be a full-time employee of the Board or the Metropolitan Government.

6.8 The Foundation's Efforts. The Foundation shall use its reasonable skill and judgment in performing the operation and maintenance services required by this Article. The Foundation shall use its good faith, commercially reasonable efforts to cause the operation and maintenance of the Project to be managed in as expeditious and economical a manner as is practicable. The Foundation shall use its good faith efforts to cause such operation and maintenance services to be completed: (a) in compliance with all Legal Requirements; and (b) in a lien free manner, and shall promptly remove or cause to be removed by

bonding or otherwise all liens filed against the Project Site or related to the Project, provided that the Foundation shall be permitted to contest any such liens without removing same provided that the existence of any such liens will not present any risk of loss of title (including any leasehold title) to the Project Site.

6.9 Application of Revenues. All revenues from the operation of the Project shall be deposited in a separate account established by the Foundation for such purpose (the "Project Revenue Account"). The Foundation shall apply such revenues solely to pay expenses related to the operation and maintenance of the Project incurred by the Foundation pursuant to this Agreement; provided, however, that if there are any excess revenues over expenses during any Fiscal Year, such excess revenues shall be used in the following order of priority: (a) to reimburse the Foundation for any operating revenue shortfalls funded by the Foundation from its own moneys in previous Fiscal Years, and (b) to be held in the Project Revenue Account and used to pay costs, including the cost of Capital Improvements, incurred in connection with the operation, maintenance and improvement of the Project. In no event shall any revenues from the Project be commingled with the general funds of the Foundation and used for any purposes of the Foundation other than its obligations pursuant to this Article except as otherwise expressly provided in clause (a) of this Section. To the extent the expenses incurred by the Foundation to fulfill its obligations under this Article exceed the revenues from the Project and any excess revenues held in the Project Revenue Account in any Fiscal Year, the Foundation shall be responsible for funding any such shortfall from its own moneys.

6.10 Operating Budget. The Foundation shall prepare an annual budget for monthly operation and maintenance expenses (the "Operating Budget") for each Fiscal Year (or portion thereof) that the Project will be in operation. The Foundation will use its best efforts to operate and maintain the Project in accordance with the submitted Operating Budget and any modifications thereto during each Fiscal Year.

ARTICLE VII

INDEMNIFICATION AND INSURANCE

7.1 Indemnification.

(a) The Foundation shall indemnify and save the Industrial Board and the Metropolitan Government (all of the foregoing indemnified parties being referred to individually as an "Indemnified Party" and collectively as the "Indemnified Parties") harmless in respect of, and at the written request of any of them as provided in paragraph (b), defend any action, cause of action, suit, debt, cost, expense, claim, or demand whatsoever brought or asserted by any third person whomsoever, at law or in equity, arising by way of any breach by the Foundation, its employees, servants, agents, or other persons for whom it is responsible, of any of the provisions of (i) the Project Sublease or (ii) this Agreement which impose duties on the Foundation or by reason of the negligent act or omission of the Foundation, its employees, servants or agents, or other persons for whom it is responsible, if committed within the scope of the Foundation's duties and authority hereunder, which indemnity shall continue notwithstanding the expiration or earlier termination of this Agreement with respect to any act or occurrence preceding such expiration or termination. Nothing contained in this Section shall be deemed to nullify, or to constitute a waiver or relinquishment by the Foundation of, the benefit to the Foundation of any insurance carried by any Indemnified Party hereto with respect to the Project which covers any act, omission or conduct of the Foundation for which the Foundation has indemnified any Indemnified Party hereunder. In addition, the Foundation will not be liable for indemnification hereunder to the extent that any action, cause of action, suit, debt, cost, expense, claim, or demand was caused by the gross negligence

or willful misconduct of the party seeking indemnification. Further, the Foundation shall not be liable for any settlement effected by an Indemnified Party without the written consent of the Foundation.

(b) Promptly after receipt by an Indemnified Party under paragraph (a) of this Section of notice of the commencement of any action against such Indemnified Party in respect of which indemnity or reimbursement may be sought against the Foundation under such paragraph (a), said Indemnified Party shall notify the Foundation in writing of the commencement thereof; provided, that any delay or failure to give such notification shall be of no effect except to the extent that the Foundation is prejudiced thereby.

(c) In case any action, claim or proceeding, as to which the Foundation is to provide indemnification hereunder, shall be brought against the Indemnified Party and the Indemnified Party notifies the Foundation of the commencement thereof, the Foundation may, or if so requested by the Indemnified Party shall, participate therein or assume the defense thereof, with counsel reasonably satisfactory to the Indemnified Party; provided that, except as provided below, the Foundation shall not be liable for the expenses of more than one separate counsel representing the Indemnified Parties in the action, claim or proceeding.

(d) If the Foundation shall not have employed counsel to have charge of the defense of the action, claim or proceeding, or if any Indemnified Party shall have concluded reasonably that there may be a defense available to it or to any other Indemnified Party which is different from or in addition to those available to the Foundation or to any other Indemnified Party (hereinafter referred to as a "separate defense"), (i) the Foundation shall not have the right to direct the defense of the action, claim or proceeding on behalf of the Indemnified Party, and (ii) reasonable legal and other expenses incurred by the Indemnified Party (including without limitation, to the extent permitted by law, reasonable attorney's fees and expenses) shall be borne by the Foundation; provided, that the Foundation shall not be liable for the expenses of more than one additional separate counsel for each Indemnified Party with respect to such separate defenses. For the purpose of this paragraph, an Indemnified Party shall be deemed to have concluded reasonably that a separate defense is available to it or any other Indemnified Party if (1) such Indemnified Party shall have requested an unqualified written opinion from Independent Counsel to the effect that a separate defense exists, and such Independent Counsel shall have delivered such opinion to the Indemnified Party within ten (10) days after such request, or (2) the Foundation agrees that a separate defense is so available. For purposes of this paragraph, Independent Counsel shall mean any attorney, or firm or association of attorneys, duly admitted to practice law before the supreme court of any state and not a full time employee of the Foundation. Nothing contained in this paragraph (d) shall preclude any Indemnified Party, at its own expense, from retaining additional counsel to represent such party in any action with respect to which indemnity may be sought from the Foundation hereunder.

7.2 Insurance. (a) During and after the completion of the Project, the Foundation shall maintain insurance providing the types and amounts of coverages more particularly described in the Project Lease and Project Sublease . All of such policies of insurance shall name and designate the Industrial Board and the Metropolitan Government as a named insured to the extent of the Metropolitan Government Grant. Such policies shall not be cancelled without at least thirty (30) days' prior written notice to each insured named therein.

(b) The Foundation shall maintain comprehensive general liability insurance in form and substance acceptable to the Metropolitan Government and shall name the Industrial Board and the Metropolitan Government as additional insureds and shall provide coverage with minimum limits of \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

7.3 Effect of Casualty. If the Project should be destroyed or damaged by any cause, then the Foundation shall take such actions as required by the Project Sublease.

7.4 Effect of Condemnation. If title to the entire Project Site is taken or conveyed under threat of eminent domain, this Agreement shall terminate, and the Project Lease and Project Sublease shall simultaneously be terminated and such portion of any condemnation equal to the Metropolitan Government Grant shall be paid to the Metropolitan Government. If a portion of the Project Site is taken so that the Project may be operated on the remainder of the Project Site, this Agreement shall remain in full effect. In such case, any condemnation award shall be applied to make such modifications as may be required to the Project to permit the operation thereof, and any remainder shall be payable to the parties to the extent of their respective interests in the Project.

ARTICLE VIII FUNDS PROVIDED BY FOUNDATION

8.1 Contributions Toward Construction Costs. In consideration of the benefit to the Foundation from having the opportunity to use the Project and for the Metropolitan Government Grant, the Foundation agrees to contribute all additional amounts necessary to complete the construction of the Project pursuant to the Plans. The Foundation agrees to make such funds available as necessary and required to pay such amounts as may become due in connection with the construction of the Project.

8.2 Pledges. The Foundation will provide satisfactory evidence to the Metropolitan Government that the Foundation has received sufficient funding or commitments for funding to complete the Project. Such evidence of sufficient funding may include a written commitment from one or more state or national banks to provide a loan to the Foundation concurrently with pledges in an amount sufficient to timely repay any such loan in combination with any other funds on hand and pledges received from donors in an aggregate amount sufficient to satisfy the Metropolitan Government that the Foundation will be able to fulfill its obligations hereunder. To assist the Foundation in obtaining the pledges described in this paragraph, the Foundation shall be entitled to grant donors the right to name specific rooms and areas in the Project provided that the Foundation has received advice from nationally recognized bond counsel that the grant of such naming rights does not adversely affect the tax-exempt status of any bonds or notes issued by the Metropolitan Government for the purposes of financing the Metropolitan Government Grant.

ARTICLE IX DEFAULTS AND REMEDIES

9.1 Defaults Generally. Except as described in Section 9.2 hereof, if any party fails to perform any of its obligations hereunder and fails to cure such failure within ninety days (90) after notice of such failure from any other party hereto, the party that fails to perform its obligations shall be deemed in default hereunder, and the other parties hereto shall be entitled to exercise such remedies as are permitted by law or equity as a remedy for such breach.

9.2 Specific Defaults By Foundation. In addition to the remedies described in Section 9.1 above, if the Foundation fails to perform any of its obligations under Articles V or VI or Section 8.1 hereof and such failure is not cured (or waived by the Industrial Board and the Metropolitan Government as the case may be) within ninety days (90) days after notice of such failure from any other party hereto, the Industrial Board and the Metropolitan Government may terminate the Foundation's right to perform any of the obligations under Articles V and VI that have not been performed to date, and the Industrial Board and the Metropolitan Government may retain a third party to perform any of such obligations, provided, however, that if any such default cannot be reasonably cured during the periods referenced

above, the Foundation shall have such additional period of time as may be reasonably necessary to cure such default provided that the Foundation proceeds with due diligence to cure such default. Upon such termination, and subject to the terms and provisions of the Project Sublease, the Foundation shall assign to the Industrial Board and the Metropolitan Government all contracts and agreements relating to the development, construction, operation and maintenance of the Project as to which the Industrial Board and the Metropolitan Government requests assignment and shall be responsible to the Industrial Board and the Metropolitan Government for any additional cost incurred by the Industrial Board in retaining a third party to perform the obligations of the Foundation under Articles V or VI of the Agreement. Such termination shall not affect the Foundation's obligation to make the funds available required by Section 8.1.

9.3 No Waivers. No waiver by any party hereto of any violation or breach of any of the terms, provision or covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, or covenants herein contained. Forbearance by any party in enforcing one or more of the remedies herein provided upon a default by another party shall not be deemed or construed to constitute a waiver of such default or of the non-defaulting party's right to enforce any remedies with respect to any such default or any subsequent default. If, on account of any default by any party of its obligations under the terms and conditions of this Agreement, it shall become necessary or appropriate for another party to employ or consult with an attorney to enforce or defend any of the such party's rights or remedies hereunder, the defaulting party agrees to pay the reasonable attorney's fees so incurred by the non-defaulting party.

ARTICLE X REPRESENTATIONS AND WARRANTIES

10.1 Representations By Industrial Board. The Industrial Board represents and warrants that: (a) it is a public nonprofit corporation duly organized and existing under the laws of the state of Tennessee; (b) it has full power and authority to enter into this Agreement and to perform its obligations hereunder; (c) by proper action it has been duly authorized to execute and deliver this Agreement; (d) the execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not conflict with or result in a breach of any of the terms or conditions of any limited liability company restriction or agreement to which the Industrial Board is now a party or by which it is bound and do not constitute a default under any of the foregoing and do not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Industrial Board under the terms of any instrument or agreement other than this Agreement; and (e) it will not take any action or omit to take any action that will cause interest on the obligations issued by the Metropolitan Government to fund the Metropolitan Grant Contribution to be included in gross income of the holders thereof for federal income tax purposes and that it will provide all necessary certifications in connection therewith.

10.2 Representations By the Metropolitan Government. The Metropolitan Government represents and warrants that: (a) it is a public corporation duly organized, chartered and existing under the laws of the state of Tennessee; (b) it has full power and authority to enter into this Agreement and to perform its obligations hereunder; (c) by proper action it has been duly authorized to execute and deliver this Agreement; (d) the execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not conflict with or result in a breach of any of the terms or conditions of any restriction or agreement to which the Metropolitan Government is now a party or by which it is bound and do not constitute a default under any of the foregoing and do not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Metropolitan Government under the terms of any instrument or agreement other than this Agreement; and (e) it will not take any action or omit to take any action that will cause interest on the obligations issued by the Metropolitan Government to fund the Metropolitan Grant Contribution to be

included in gross income of the holders thereof for federal income tax purposes and that it will provide all necessary certifications in connection therewith.

10.3 Representations By Foundation. The Foundation represents and warrants that: (a) it is a nonprofit corporation duly organized and existing under the laws of Tennessee; (b) it has full power and authority to enter into this Agreement and to perform its obligations hereunder; (c) by proper action it has been duly authorized to execute and deliver this Agreement; (d) the execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not conflict with or result in a breach of any of the terms or conditions of any agreement to which the Foundation is now a party or by which it is bound, and do not constitute a default under any of the foregoing and do not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Foundation under the terms of any instrument or agreement other than this Agreement; and (e) it will not take any action or omit to take any action that will cause interest on the obligations issued by the Metropolitan Government to fund the Metropolitan Grant Contribution to be included in gross income of the holders thereof for federal income tax purposes and that it will provide all necessary certifications in connection therewith.

ARTICLE XI GENERAL PROVISIONS

11.1 Notices. Any notice, request, demand, instruction or other communication (a "Notice") to be given to any party with respect to this Agreement may be given either by the party or its counsel and shall be deemed to have been properly sent and given when (a) delivered by hand, (b) sent by certified mail, return receipt requested, or (c) sent by reputable courier service. If delivered by hand or courier service, a Notice shall be deemed to have been sent, given and received on the date when actually received by the addressee (or on the date when the addressee refuses to accept delivery of same). If sent by certified mail, a Notice shall be deemed to have been sent and given when properly deposited with the United States Postal Service with the proper address and postage paid therewith, and shall be deemed to have been received on the third (3rd) Business Day following the date of such deposit, whether or not actually received by addressee. The addresses to which Notices shall be sent are:

If to the Industrial Board:	c/o Director, Mayor's Office of Economic and Community Development Metropolitan Courthouse, Suite 100 Nashville, Tennessee 37219
If to the Foundation:	6717 Centennial Boulevard Attention: Chairman Nashville, Tennessee 37209
If to the Metropolitan Government:	Attention: Director of Finance Metro Courthouse, Suite 106 One Public Square Nashville, Tennessee 37201
With a Copy to:	Director of Law Metro Courthouse, Suite 108 One Public Square Nashville, TN 37201

Each party shall have the right to change the address to which Notices to it are to be sent by giving written notice of said change to the other parties as provided in this Section.

11.2 Entire Agreement, Modifications. This Agreement constitutes the sole and entire agreement between the parties hereto with respect to the matters set forth herein, and no representation, warranty, covenant, inducement or obligation not included in this Agreement shall be binding upon either party hereto. No modification, alteration or amendment of this Agreement shall be binding unless signed by the party against whom such modification, alteration, or amendment is sought to be enforced.

11.3 Governing Law, Severability. This Agreement shall be governed by, and interpreted, construed and enforced in accordance with, the laws of the State of Tennessee. If any portion of any provision of this Agreement shall be declared invalid or unenforceable under applicable law, then the performance of such portion shall be excused to the extent of such invalidity or unenforceability, but the remainder of this Agreement shall remain in full force and effect.

11.4 References and Exhibits. Whenever in this Agreement there is any reference to any article, section, or exhibit, unless the context shall clearly indicate otherwise, such reference shall be interpreted to refer to an article, section, or exhibit in or to this Agreement. Each exhibit referred to in this Agreement is hereby incorporated herein by reference and made a part of this Agreement in the same manner as if it were restated verbatim herein.

11.5 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one and the same Agreement. It shall not be necessary that each party execute each counterpart, or that any one counterpart be executed by more than one party, so long as each party executes at least one counterpart.

11.6 Interpretation of This Agreement. The parties acknowledge that each party and its counsel have participated in the negotiation and preparation of this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing the Agreement to be drafted.

11.7 Gender and Number. All words and phrases used in this Agreement, including, without limitation, all defined words and phrases, regardless of the number or gender in which used, shall be deemed to include any other number or gender as reasonably may be required by the context.

11.8 Waiver of Conditions. Each party shall have the right, in its sole discretion, for any reason or for no reason, to waive any condition precedent or contingency contained in this Agreement for the benefit of said party, provided that such waiver shall be in writing and if any such waiver occurs, this Agreement shall be interpreted and construed as if such condition precedent or contingency had never been a part of this Agreement, except to the extent that said condition precedent or contingency is stated in this Agreement to be also for the it of the other party.

11.9 Captions. The captions appearing in this Agreement are for convenience of reference only, shall in no way limit or enlarge any terms or conditions of this Agreement, and shall not be used to construe the intent of the parties.

11.10 No Partnership or Joint Venture; Independent Contractor. None of the parties hereto shall be deemed to be, for any purpose whatsoever, partners or joint venturers with each other. For all purposes of this Agreement, the Foundation shall be deemed to be acting as an independent contractor of the Industrial Board under this Agreement and not as an agent of the Industrial Board or the Metropolitan Government.

11.11 No Assignment; Binding Effect.

(a) The rights of the parties under this Agreement are personal to the parties any may not be assigned without the prior written consent of the other parties.

(b) This Agreement shall be binding and shall inure to the benefit of the parties hereto, and their permitted successors and assigns.

11.12 Time of The Essence. Time is of the essence with respect to the provisions in Article VI of this Agreement.

11.13 Exculpation. The liability of the Industrial Board for the breach of any obligations hereunder shall be limited to its interest in the Project and it shall be entitled to indemnification from the Foundation.

Signatures on the Following Page

IN WITNESS WHEREOF, the undersigned the Industrial Board and the Foundation have caused this Agreement to be executed by their duly authorized representatives.

THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY

THE AFRICAN AMERICAN HISTORY
FOUNDATION OF NASHVILLE, INC.

Mayor David Briley

By: _____
Its: _____

APPROVED AS TO AVAILABILITY OF
FUNDS:

ATTEST :

Director of Finance

By: _____
Its: _____

APPROVED AS TO FORM AND LEGALITY:

Metropolitan Attorney

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY,
TENNESSEE

Chair

ATTEST:

Secretary